straint of marriage. While conditions against marrying without consent (*In re Smith*, 44 Ch. D. 654), or before some reasonable age (*Yonge* v. *Furse*, 8 D. M. & G. 756), or against marriage with a person of a certain nationality (*Perrin* v. *Lyon*, 9 East, 170), are valid, a condition against marrying any man who is not seised of a freehold worth £500 a year has been held to be too general, and therefore void (*Keily* v. *Monck*, 3 Ridg. P. C. 205). All that can be said is that the condition, even if not in complete restraint of marriage, must not *unreasonably* restrict the freedom of the donee. Story, Eq. Juris. § 280.

Although the condition be not expressed in so many words, if the natural operation of the gift is to restrain marriage, courts will treat the implied condition as illegal to the same extent as an express condition. But in cases of provision for support until marriage, they will not be astute to imply such a condition. A *bona fide* bequest during celibacy is good; "for the purpose of intermediate maintenance will not be interpreted maliciously to a charge of restraining marriage." *Scott* v. *Tyler*, 2 Dick. 712, 722.

The most refined subtlety in the whole doctrine, however, is to be found in the so called *in terrorem* principle. In case of gifts of personal property, where there is a condition subsequent, which is only in partial restraint of marriage, and hence is valid in itself, and there is no gift over, courts have held that the failure to dispose of the residue of the property shows that the condition was inserted by the testator merely for the influence it might have on the donee, to alarm him, as it were, and have refused to allow a forfeiture in case of breach. This doctrine "explores in slippery places," and the reasons given for it savor of excessive refinement. Schouler on Wills, § 603. The entire subject of conditions in restraint of marriage is well treated in 2 Jarman on Wills, 5th ed., 885–898; and in the note to *Scott* v. *Tyler*, 2 White & T. Lead. Cas. Eq., 5th ed., 179–205.

THE BRAM TRIAL. — The case of *United States* v. *Bram* will stand as one of the great murder trials of the day. From the night in July, when the triple murder on the barkentine Herbert Fuller was committed, to the conclusion of the trial before the United States Circuit Court at Boston there has been a succession of sensational incidents. An atmosphere of mystery, not yet entirely dispelled, has enveloped the whole affair. It is not surprising that a large portion of the New England public became absorbed in the reports of the proceedings as in a matter of almost personal moment. Those who attended the trial received impressions not soon to be forgotten. Unusual circumstances gave vivid color to the remarkable case; — the trying position of the young passenger, the dazed uneasiness of the sailor witnesses, the striking personal appearance of the defendant, and his admirable bearing on the witness stand during the ordeal of long cross-examination. Legally the most salient features were the endeavor of the defence to have excluded the testimony of the principal witness for the prosecution, and the attempt of the government to show motive by evidence of occurrences entirely unconnected with the case in point of time and surroundings. Most remarkable and interesting of all was the verdict of "Guilty" reached by the jury after twenty-six hours of deliberation, and in light of the fact that no reason for the crime had been presented. The strong popular disapproval of the result

expressed itself in attacks on the court, the jury, the district attorney, and the criminal law in general.

It is impossible within the limits of this note to review the evidence even briefly; but of those who intelligently followed the course of the trial, few doubted the justice of the verdict. The jury in arriving at their decision performed a courageous act, and it is to be deplored that the conduct of certain of its members since their dismissal has not been equally deserving of commendation. Perhaps a suggestion as to the probable cause of the popular clamor will not be out of place. The public mind does not work logically. The element of seeming unreliability in the testimony of the government's chief witness, Charles Brown, furnished perhaps a reason for doubting the defendant's guilt as established by that particular evidence. It afforded no good grounds, however, for entirely neglecting the circumstantial evidence which in the opinion of the majority of trained lawyers was amply sufficient to support the verdict. And yet this was the unconscious line of reasoning taken by the majority of those who denounced the finding of the jury. It indicates what is the root of the difficulty. People generally refuse to realize that proof beyond a reasonable doubt is precisely the same thing, whether the result is to be a fine, imprisonment, or death. Yet the fact is fairly obvious. The degree of punishment of a crime does not affect the logically probative force of the evidence, and a defendant is not innocent because his life is at stake. But the public thinks to compensate for its fallacious reasoning on the ground that it errs on the side of mercy. This is not so. The pitiable situation of a defendant on trial for a capital crime is not to be denied; but on the score of mercy, the stifling sensation which unpunished murder raises in the minds of perfectly innocent members of the community, especially in the weak and helpless, is entitled to greater consideration. As has often been pointed out, exaggerated sympathy with an accused is neither sensible nor kind; it is not well considered and does not rest on a sound foundation; it overlooks the fact that an important duty of the law is to punish the guilty.

THE CONSTITUTIONALITY OF MINORITY REPRESENTATION. — The advisability of the adoption of some scheme of minority representation is a constant theme of discussion among political reformers. The constitutional aspect of the question is often overlooked. That there may be grave doubts in some of our States whether a system providing for representation of the minority can be formulated, which will not conflict with the provisions of the State Constitution relative to the electoral franchise, is shown by the opinion recently written by Judge John F. Dillon,[1] to whom the question was referred by the committee for the preparation of a charter for Greater New York. The New York Constitution, Article II., Section I., provides that "every male citizen of the age of twenty-one years . . . shall be entitled to vote . . . in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people." This provision will of course be guarded by the courts with the utmost watchfulness. It was under the precisely similar section in the previous Constitution that the Court of Appeals, in *Matter of Gage*, 141 N. Y. 112, held that

[1] The opinion is printed in full in the Albany Law Journal for November 28, p. 346.